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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,532	03/20/2001	David Allen Schul	8003	2563

27752 7590 10/01/2002

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EXAMINER

JIANG, SHAOJIA A

ART UNIT PAPER NUMBER

1617

DATE MAILED: 10/01/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/812,532

Applicant(s)

SCHUL ET AL.

Examiner

Shaojia A. Jiang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on August 5, 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 and 51-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 and 51-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This Office Action is a response to Applicant's amendment and response filed on August 5, 2002 in Paper No. 10 wherein claims 42-50 are cancelled and claims 1, 4, and 7 have been amended. Currently, claims 1-41 and 51-56 are pending in this application.

Applicant's amendment filed on August 5, 2002 in Paper No. 10 with respect to the rejection of claims 1-41 and 51-56 made under 35 U.S.C. 112 second paragraph for the use of the indefinite expressions, i.e., MUFAs, SFAs, and PUFAs, of record stated in the Office Action dated January 29, 2002 have been fully considered and found persuasive to remove the rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 51-56 are rejected under 35 U.S.C. 112, second paragraph, for the use of the indefinite expressions, i.e., "a free sterol level of less than 10%", of record stated in the Office Action dated January 29, 2002.

Applicant's remarks filed on August 5, 2002 in Paper No. 10 regarding this rejection have been fully considered but not found persuasive to remove the rejection since the term "free" in claim 51 is unclear as to what would be considered as a free

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sterol level. Therefore, the scope of claims is indefinite as to the composition encompassed thereby.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-41 and 51-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miettinen et al. (5,502,045) and Wester et al. (WO 99/56558) in view of Letton et al. (5,306,516) and Dickson et al. (5,869,304) essentially for reasons of record stated in the Office Action dated January 29, 2002.

Applicant's remarks filed on August 5, 2002 in Paper No. 10 with respect to this rejection of claims 1-41 and 51-56 made under 35 U.S.C. 103(a) in the previous Office Action have been fully considered but are not deemed persuasive as to the nonobviousness of the claimed invention over the prior art for the following reasons.

Applicants argue that neither Miettinen et al. and Wester et al. teach or suggest a sterol ester composition wherein more than 50% of the fatty acid moieties are MUFAs. However, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F.2d 413, 208 SPQ 871 (CCPA 1981); In re Merck & Co., Inc., 800 F.2d 1091, 231 USPQ 375 (Fed.

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Cir. 1986). See MPEP 2145. In the instant case, as discussed in the previous Office Action, Letton et al. clearly discloses that "fatty acid radicals can be used singly or in mixtures with each other in all proportions", and that the mixed fatty acid radicals from the oils should contain at least about 30% (preferably at least 50%, most preferably at least 80%) of the desired unsaturated or saturated acids, and that particular mono- and/or di- unsaturated fatty acids such as oleic acid are preferred to be employed in shortening compositions therein containing polyol fatty acid esters because of their oxidative stability. Thus, the teachings of Letton et al. have provided the motivation to employ 50% MUFAs as the fatty acid moieties in the composition herein.

Therefore, motivation to combine the teachings of the prior art cited herein to make the present invention is seen. The claimed invention is clearly obvious in view of the prior art.

The record contains no clear and convincing evidence of nonobviousness or unexpected results for the combination method herein over the prior art. In this regard, it is noted that the specification provides no side-by-side comparison with the closest prior art in support of nonobviousness for the instant claimed invention over the prior art.

For the above stated reasons, said claims are properly rejected under 35 U.S.C. 103(a). Therefore, said rejection is adhered to.

In view of the rejections to the pending claims set forth above, no claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, Ph.D., can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

Shaojia A. Jiang, Ph.D.
Patent Examiner, AU 1617
September 16, 2002


SREENI PADMANABHAN
PRIMARY EXAMINER

9/30/02